

# DECISION



THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D.C. 20548

58839

FILE: B-184037

DATE: June 27, 1975 97/38

MATTER OF: John C. Brown

## DIGEST:

1. Protest filed with GAO nearly 2 months after notification of agency's denial of similar protest to the agency is untimely under requirements of 4 C.F.R. 20.2(a)(1970).
2. Failure to file timely protest due to inability to acquire GAO Bid Protest Procedures is not excusable since publication of procedures in Federal Register constitutes constructive notice thereof. 53 Comp. Gen. 533 (1974); Construction Associates, Inc., November 8, 1974.

Counsel for Mr. John C. Brown has protested the award of a contract pursuant to Invitation for Bids R5-07-75-03, issued by the Forest Service, Las Padres National Forest, for the services of a crawler tractor.

Essentially, the protester contends that the successful bidder submitted a bid which was nonresponsive to the invitation's minimum horsepower requirement. However, we have concluded, for the reasons stated below, that the protest must be rejected as untimely filed with this Office.

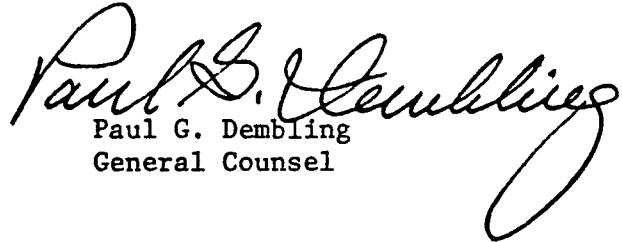
The contracting agency has informally advised this Office that Mr. Brown lodged a similar protest with the contracting officer by letter dated March 3, 1975, and that this protest was denied by letter of April 2, 1975. The subsequent protest filed with this Office was received on May 29, 1975, or nearly 2 months after the agency's rejection of the initial protest.

The bid protest procedures and standards applicable to this protest are set out in 4 C.F.R. 20.2(a)(1970) and require, in pertinent part, that protests be filed within 5 days after the basis for the protest is known or should have been known. If a protest has been filed initially with the contracting agency, any subsequent protest to our Office must be filed within 5 days of notification of adverse

agency action if the initial protest to the contracting agency was timely made. The term "filed" as used by that section means receipt in the contracting agency or in our Office, as the case may be. Thus, a protest filed with this Office nearly 2 months after notification of adverse agency action in the matter, is untimely filed and must be rejected.

While counsel states he experienced some delay in filing the protest due to lack of immediate access to the bid protest procedures of this Office, the applicable rules and regulations are published in Volume 36 of the Federal Register at pages 24791 and 24792 (December 23, 1971). We consider such publication to constitute constructive notice thereof. See 53 Comp. Gen. 533, 534 (1974); Construction Associates, Inc., B-182267, November 8, 1974.

Accordingly, we must decline to render a decision on the merits.

  
Paul G. Dembling  
General Counsel